IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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FAO NO. 2575 OF 1998

Date of decision : February 21, 2007

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Chajju Singh and another .....appellants

Vs.

Chandigarh Transport Undertaking & anr. .....respondents

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CORAM: HON'BLE MR. JUSTICE VINOD K. SHARMA.

Present: Mr. S.K Jain, Advocate for the appellants.
Mr. K.K Gupta, Advocate for the respondent.

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Vinod K. Sharma, J. (Oral)

This is an appeal against the award dated 28.4.1998 passed by the Motor Accidents Claims Tribunal, Chandigarh (for short `the Tribunal') in MACT Case No.28 of 4.6.1996. The claimants are the father and mother of the deceased, Sukhwinder Singh who died in a road accident on 1.5.1996. It was the case of the claimants that on 1.5.1996 at about 8.30 P.M, a tractor trolley bearing No. PBV-6239 was going from the side of fields towards Mullanpur on the correct side of the road. Sukhwinder Singh was sitting on the right side mud-guard of the tractor. One bus bearing registration No. CH-01-G-5517 came from the opposite side while being driven at a high speed rashly and negligently by Harpal Singh and then the bus suddenly

turned towards the wrong side and hit the tractor trolley from its front side. At the time of the accident, the tractor was between street light pole No.118-119. On account of the impact, Sukhwinder Singh fell down from the tractor-trolley. As a result thereof, he received multiple injuries. He was taken to the hospital where he was declared brought dead. It was claimed that the accident occurred due to the negligent and rash driving of the bus No. CH-01-G-5517 by Harpal Singh. Sukhwinder Singh was stated to be aged 18 years and self-employed. It was claimed that he was doing the business of welding in village Dhanas, U.T, Chandigarh.

The petition was contested by respondent no.2, in which it was claimed that right wheel of the tractor had struck against the bus adjacent to the diesel tank on account of loss of control by the driver of the tractor. Negligence on the part of the bus driver was denied. It was further claimed that a false FIR was got registered against Harpal Singh, respondent no.3. It was also claimed that the driver of the tractor was not having a valid driving licence and that tractor was not insured. A further plea taken by the respondent was that there was no provision for the persons to travel on the tractor and therefore, the claimants were not entitled to any compensation.

Respondent no.1 denied the averments made in the claim petition for want of knowledge. However, it was ascertained by respondent no.1 also that the accident occurred due to the rash and negligent driving of the tractor by its driver.

On the pleadings of the parties, following issues were framed:

1. Whether Sukhwinder Singh died because of the rash and negligent driving of the Bus No. CH-01-G-5517 by

respondent no.2 in the area of Village Dhanas ? OPP.

2. If issue no.1 is proved, whether the claimants are entitled to claim compensation? If so, how much and from whom? OPP.

3. Relief.

On Issue No.1, the learned Tribunal came to the conclusion that the accident had occurred due to the rash and negligent driving of Bus No.CH-01-G-5517 which resulted in death of Sukhwinder Singh. However on Issue No.2, learned Tribunal assessed the compensation payable at Rs. 1,02,600/-. The interest at the rate of 12% was also ordered to be paid on the compensation which was payable from the date of application till realization.

Learned counsel for the appellants had challenged the finding of the learned Tribunal on issue no.2 on the plea that the learned Tribunal committed an error in assessing the income of the deceased to be only Rs.1500/- per month. The contention of the learned counsel for the appellants was that the statement made by AW-2, father of the deceased that his income was Rs.3000/- per month remained unchallenged.

However, I have gone through the statement and find that the specific suggestion was given to the witness that the statement on the quantum of income was not correct, but it is not in dispute that no other evidence was led to prove the income. Therefore, the finding by the learned Tribunal holding that the income of the deceased was 1500/- per month cannot be said to be perverse or contrary to evidence brought on record. However, the learned counsel for the appellants has vehemently contended

that the Tribunal was wrong in assessing the dependency at the rate of Rs.750/- per month out of Rs.1500/- per month. It is not in dispute that the deceased was 18 years of age and was looking after his parents and therefore, it can safely be said that he was contributing at least Rs.1000/- to the parents out of Rs.1500/- which he was earning per month. The age of the father as disclosed in statement is about 50 years and the mother was less than 50 years and therefore, the learned Tribunal should have applied the multiplier of 13 keeping in view the age of the claimants. If the assessment is made on this basis, the claimants would be entitled to a sum of Rs.1,56,000/- as compensation on account of the death of Sh. Sukhwinder Singh. Accordingly, the finding of the learned Tribunal on issue no.3 is modified and it is held that the claimants are entitled to a sum of Rs.1,56,000/- on account of death of Sh. Sukhwinder Singh. In addition thereto, the claimants would also be entitled to a sum of Rs.2000/- towards funeral expenses and Rs.5000/- towards consortium. Total compensation payable comes to Rs.1,63,000/-. The claimant would also be entitled to interest on the enhanced amount at the rate of 9% per annum from the date of application till its realization. The liability to pay compensation shall be joint and several of the respondents.

Appeal stands disposed of.

February 21, 2007 **(VINOD K. SHARMA)**
ritu JUDGE